



RIGHTS STUFF

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Do Employers Have to Provide Accommodations So Employee Becomes Qualified?

Patricia Johnson worked as a special education teacher in the Boundary County School District for a decade. One of her job requirements was to "have and maintain the legal qualifications required to teach special education." Her teaching certificate expired in 2007. To renew it, she had to take at least six semester hours of professional development training. By the summer of 2007, she was still three hours short. She said she had taken many more hours than required, but had not received credit because she had not paid tuition.

Johnson apparently planned to complete her requirements during the summer of 2007, but had a major depressive episode that kept her from being able to do so. Her superintendent told her to apply for provisional authorization from the Idaho State Board of Education (ISBE). She applied but was unsuccessful. The board said she had had five years to complete the certification requirements which should have been sufficient. The chairman of the board said they granted provisional authorizations only when schools had a vacancy and no certified teachers were available. But in this case, there were other certified special education teachers available.

She sued, alleging disability discrimination in employment, and lost. The Court said that the Americans with Disabilities Act (ADA) was not applicable. The Court noted that the definition of a person who can sue under the ADA is a "qualified individual with a disability who satisfies the requisite skills, experience, education and other job-related requirements of the employment position such individual holds or desires to hold *and* who, with or without reasonable accommodation, can perform the essential functions of such position." (Emphasis supplied by the Court.) Johnson was not qualified to teach because she didn't have a current teacher's certification. Nothing in the ADA requires employers to provide accommodations - in this case, a waiver - to make the employee qualified. Employers are obligated to provide accommodations so that a qualified person with a disability can do the job, not so she can become qualified to do the job. The job requirement - current certification - was not discriminatory on its face.

The case is Johnson v. Board of Trustees of the Boundary County School District Number 101, 666 F. 3d 561 (9th Cir. 2011). If you have questions about the ADA, please contact the BHRC.

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Fair Housing Center of Central Indiana Files First Complaint

The Fair Housing Center of Central Indiana opened its doors in January of 2012 and in October, filed its first complaint. The Center said that it had evaluated homes owned, serviced or held in trust by Bank of America in three cities, including Indianapolis. According to the Center, Bank of America maintained and marketed homes in mostly white neighborhoods much better than it did houses in mostly Latino or African American neighborhoods. These homes had been abandoned or foreclosed, and were usually vacant.

The Center said that none of the homes in non-white communities had for-sale signs, but 27% of the homes in the white communities did. Homes in non-white neighborhoods were 1.2 times as likely to have substan-

tial amounts of trash in the yard and were 2.7 times as likely to have overgrown grass or leaves.

The Center said that homes in non-white neighborhoods were 1.8 times as likely to have damaged windows, 6.4 times as likely to have damaged roofs and 6.4 times as likely to have holes in the structure.

Amy Nelson, executive director of the Center, said that many of the problems with the homes in non-white neighborhoods, such as broken locks and clogged gutters, could be easily fixed and help prevent bigger problems. She said, "It's an important issue because of the effects a badly maintained (property) will have on the neighborhood and the community. The biggest thing is what it does to property values. Even if other folks in the neighborhood are doing every-

thing right, that house is going to decrease the value of the neighborhood."

Bank of America denied the allegations, saying it is committed to stabilizing and revitalizing communities that have been impacted by the economic downturn, foreclosures and property abandonment.

The complaint was filed with Housing and Urban Development.

If you have questions about fair housing, please call the BHRC.

(Article based on "Local Homes Are Part of Discrimination Complaint," by Tony Cook, Indianapolis *Star*, October 24, 2012, page B-1).

Statue of Liberty Now More Accessible

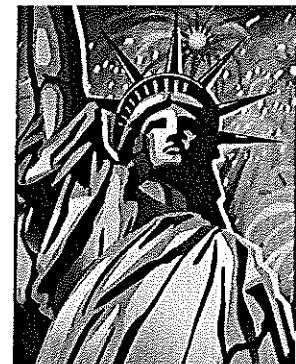
The Statue of Liberty was closed to visitors for about a year for renovations. The \$30 million renovation project included upgrades to the monument's staircases, fire alarms, air conditioning and restrooms.

And it also included renovations that improved accessibility to the monument for people with disabilities. Before the renovation, people with mobility impairments were able to visit only the ground level of the statue. Now, people with

mobility impairments will be able to visit the statue's observation level and see inside Lady Liberty, thanks to the installation of a lift. A representative of the National Parks Services, which operates the statue, said the observation area is the highest part of the monument that could be made accessible while still retaining the statue's historic structure.

The Americans with Disabilities Act does not require existing places of public accommodation

- including restaurants, stores and historic sites - to remodel or renovate. But when they do, the renovations must be done in a way that improves accessibility.





Massachusetts 16th State to Prohibit Discrimination Against Transgender People

A new Massachusetts law went into effect on July 1, 2012, banning discrimination in employment against applicants or employees on the basis of their gender identity. The law defines "gender identity" as "a person's gender-related identity, appearance or behavior, whether or not that gender-

related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." The law covers people who have undergone or who are seeking sex reassignment surgery. It also covers people who have a sincerely held belief that their gender identity is different from that assigned at birth.

Thus far, 16 states and 143 cities and counties (including Bloomington and Monroe County) include transgender people in their civil rights ordinances. According to a report by the Human Rights Campaign, more than 500 Fortune-ranked employers include gender identity in their non-discrimination policies.

Affirmative Action in College Admissions

For decades, colleges and the courts have struggled with the question of how much weight, if any, can be given to race when deciding college admissions.

The U.S. Supreme Court first addressed the issue in 1978 in the Bakke case. In that case, the Court said that race could be used as a "plus" factor in making admission decisions, but colleges could not use rigid quotas. At that time, Justice Lewis Powell wrote that "the interest of diversity is compelling in the context of a university's admission program."

In 2003, in the Grutter case, the Court continued to support narrowly-tailored admission programs that considered race as one factor. Echoing Justice Powell, Justice Sandra Day O'Connor wrote that universities had a compelling interest in "obtaining the educational benefits that flow from a diverse student body." She suggested that in another 25

years, race might no longer have to be a consideration for admission officers.

In 2012, nine years later, the Supreme Court is again wrestling with the issue. The latest case involves the University of Texas (UT). UT allots 90% of its slots to Texas residents. In 2008, the year in question, it filled nearly 90% of its openings with automatic admissions for Texas residents who were in the top ten percent of their high school classes. It decided who would fill the remaining seats by considering leadership qualities, awards, honors, extracurricular activities, socioeconomic status, family status and responsibilities, standardized test scores and race.

Abigail Fisher, a white woman, applied to UT in 2008 and was not admitted. She sued because, she said, race had been a factor in the admissions process. UT argued that she would not have been admitted even if she had

been African American. She has since graduated from Louisiana State University and works in Austin, Texas.

Justice O'Connor is no longer on the Court. She was replaced by Justice Samuel Alito, who has not supported affirmative action in the past. Justice Elena Kagan, who has supported affirmative action, recused herself, likely because she had worked on the case when she was solicitor general. The Supreme Court heard arguments





Council for Community Accessibility Presents Annual Awards

The City of Bloomington Council for Community Accessibility (CCA) recognized organizations and individuals committed to making Bloomington more accessible to people with disabilities at the annual CCA Awards Ceremony, held October 29 at St. Mark's United Methodist Church.

Pete Giordano, Director of Community and Family Resources, congratulated all the nominees and award recipients and thanked them on behalf of Mayor Mark Kruzan. Giordano presented the Mayor's Award posthumously to Sophia Travis. "Sophia was tremendously influential and supportive of people with disabilities," Giordano said. "Along with her dedication and commitment to LifeDesigns as a board member, Sophia advocated on behalf of people with disabilities throughout the community. She was instrumental in establishing the accessible Karst Farm Splash Pad. She presided over the County Council when it passed a tax levy that benefits families with disabilities needing respite. She made so many contributions to our community in so many areas of life that it is difficult to summarize them tonight. Bloomington and Monroe County are better today because of Sophia Travis."

The following award winners also were recognized for outstanding service:

Self-Advocacy Award: Rachel Roby, for being highly engaged in the community as an educator on behalf of persons with hidden disabilities and breaking down stigmatizing barriers faced by people with mental disabilities.

Professional and Community Service Award: Rebecca Davis, for successfully launching Visually Impaired Preschool Services (VIPS) in Bloomington.

Business Service Award: James McLary, president and CEO of e2Taxi, for improving mobility for the entire community, especially for people with disabilities, through accessible taxicabs.

Employment Award: The Indiana University Wells Library, for providing employment opportunities for people with disabilities.

Housing Service Award: Lauren and Peter Cowan, owners of Agewise Design, for addressing the growing need to modify living spaces for aging adults and people with disabilities.

Special Recognition: Lake Monroe Boat Rental, for donating pontoon boats for the last three Fish-tival events on Lake Monroe organized by the Southern Indiana Center for Independent Living; Dr. James Laughlin, for outstanding contributions to children with special medical needs through establishment of a local clinic in partnership with Riley Hospital for Children; and St. Thomas Lutheran Church under the leadership of Pastor Lyle McKee, for extraordinary efforts on behalf of persons with disabilities, enabling them to be fully included in congregational activities.

Kristin Willison Volunteer Service Award: Carle Crawford, for volunteering on behalf of persons with disabilities at Area 10 Agency on Aging, Citizen Advocacy of South Central Indiana, Monroe County Crop Walk, New Leaf-New Life, Monroe County Public Library, in nursing homes and wherever he sees a need.

The ceremony also included recognition of several fully accessible local businesses and a keynote presentation by Lou MoneyMaker, the president and CEO of Bosma Enterprises. For information on the Council for Community Accessibility, go to <http://bloomington.in.gov/cca> or contact special projects coordinator Craig Brenner at 349.3471 or brennerc@bloomington.in.gov.